

01/30/09

E-19J

Ms. Elizabeth Orlando
OES/ENV Room 2657
U.S. Department of State
Washington, DC 20520

Re: Draft Environmental Impact Statement for the Alberta Clipper Pipeline Project, North Dakota, Minnesota, Wisconsin [CEQ# 20080497]

Dear Ms. Orlando:

The U.S. Environmental Protection Agency (EPA) reviewed the Department of State's (DOS) Draft Environmental Impact Statement (DEIS) for the Alberta Clipper Pipeline Project. Our review and comments are provided pursuant to the National Environmental Policy Act (NEPA), the Council on Environmental Quality (CEQ) Regulations (40 CFR Parts 1500-1508), and our NEPA review authority under Section 309 of the Clean Air Act (CAA).

Enbridge Energy, Limited Partnership (Enbridge) proposes to construct, operate and maintain 992 miles of new pipeline and related facilities (Alberta Clipper Pipeline Project) extending from Hardisty, Alberta, Canada to Superior, Wisconsin. The pipeline would deliver an average of 450,000 barrels per day of crude oil from a supply hub near Hardisty to Enbridge's existing terminal in Superior, Wisconsin. The DEIS identifies that Enbridge is currently proposing the Alberta Clipper Pipeline Project, in part, to meet the increasing demand for crude oil in the United States and reduce U.S. dependence on foreign oil from outside North America. The DOS is considering issuing a Presidential Permit for the construction, operation and maintenance of facilities associated with the Alberta Clipper Pipeline at the U.S./Canada border.

The DEIS concerns the portion of the proposed Alberta Clipper Pipeline Project located within the United States. The U.S. portion of the proposal includes the construction and/or installation, operation and maintenance of 331.8 miles of new 36-inch-diameter underground pipeline and associated equipment and facilities from the U.S.-Canada border near Natchez, North Dakota, crossing Minnesota to the Clearbrook Terminal and continuing on to Enbridge's existing terminal in Superior, Wisconsin.

Enbridge also proposes to construct a 188-mile-long, 20-inch-diameter pipeline (Southern Lights Diluent Pipeline) between the Clearbrook and Superior Terminals at the same time and substantially next to the Alberta Clipper pipeline. The DEIS assesses the impacts associated with Enbridge's Southern Lights Diluent Project and reports the impacts as part of the Alberta Clipper Pipeline Project.

In addition, Enbridge is proposing to expand its existing Superior, Wisconsin terminal (the Superior Terminal Expansion Project) by constructing 5 new tanks to accommodate the crude oil delivered by the Alberta Clipper Pipeline. Alternatives and impacts associated with this connected action are identified and discussed in the DEIS.

The DEIS does not identify a DOS preferred alternative pipeline route.

We have concerns regarding environmental impacts of the proposed project, as well as a lack of some important information in the DEIS pertaining to alternatives and mitigation. We give the DEIS and the Enbridge-identified Proposed Action Alternative EC-2 ratings (environmental concerns – additional information needed). This means that EPA has identified environmental impacts that should be avoided in order to fully protect the environment. Additional information regarding alternatives, and mitigation commitments for avoiding, minimizing and compensating for impacts to water resources (including wetlands), agricultural land, and forests should be included in the Final EIS (FEIS) and Record of Decision (ROD). A summary of EPA's rating definitions is enclosed.

In particular, we are concerned with the potential impact to approximately 1,434 acres of wetlands and 151 stream crossings, and are aware that there may be other feasible pipeline route variation alternatives with less adverse impacts to these resources that have not been considered in this DEIS. Most of these resources are located in Minnesota and Wisconsin. Specifically, we understand that Enbridge and the Fond du Lac Tribal Government (FDL) are still in discussions regarding locating the pipeline through the FDL Reservation. Consequently, the DEIS FDL Major Route Alternative that would abut Enbridge's existing right-of-way through the FDL Reservation may still be a viable Major Route Alternative to take into consideration when identifying the FEIS preferred alternative. The results of these discussions should be documented in the FEIS.

The DEIS (pages 3-6 and 4-69) also identifies that Enbridge is currently consulting with the Wisconsin Department of Natural Resources (WDNR) to conduct an alternatives analysis of potential pipeline route variations in Wisconsin that are in addition to the Nemadji Golf Course Route Variation identified as part of the Proposed Action Alternative in the DEIS. We recommend this additional information be presented in the FEIS for consideration in a format that will allow a reviewer to evaluate and compare each new alternative and its impacts against the other new alternatives' impacts, as well as against the Nemadji Golf Course Route Variation Alternative. We recommend including charts or tables to help define the issues and provide a clear basis for choice among these options. We also request this type of format be provided in the FEIS for comparing between the Proposed Action Alternative and the FDL Major Route Alternative, as well as for comparing each of the DEIS identified 21 Route Variation Alternatives against corresponding alternatives that abut the existing Enbridge right-of-way.

The FEIS should describe, discuss and consistently apply the specific criteria used, and the trade-offs made, in identifying the Major Route Variations and Route Variation Alternatives that comprise, in part, the FEIS preferred alternative. This information is crucial for identifying

the least environmentally damaging practicable alternative (LEDPA) for U.S. Army Corps of Engineers' (COE) Clean Water Act (CWA) Section 404 permits.

EPA has additional responsibilities under Sections 404 and 401 of the Clean Water Act for reviewing the Alberta Clipper Project. We reserve the right to provide new or additional comments during our water quality certification (Section 401) for portions of the Alberta Clipper Pipeline Project on the Leech Lake Reservation and during our 404 review of the Alberta Clipper Pipeline Project's impacts to aquatic resources in Minnesota and Wisconsin. We also reserve our right to provide new and additional comments during our 404 review of impacts to aquatic resources associated with Enbridge's proposed Superior Terminal Expansion Project in Wisconsin.

EPA's detailed DEIS comments and recommendations for the FEIS are enclosed with this letter.

If you have any questions regarding our comments, please contact Virginia Laszewski, lead reviewer to this project, at (312) 886-7501 or at laszewski.virginia@epa.gov. Please provide us with copies of the FEIS, when available.

Sincerely,

/S/

Kenneth A. Westlake, Supervisor
NEPA Implementation
Office of Enforcement and Compliance Assurance

Enclosures: 2

cc: Larry Svoboda / Larry Kimmel, EPA, Region 8, Denver, CO
Tamara Cameron, U.S. Army Corps of Engineers, St. Paul District, MN
Nick Rowse, Project Biologist, Green Bay Ecological Services Field Office, U.S. Fish and Wildlife Service, MN
Joel Trick, Project Biologist, Green Bay Ecological Services Field Office, U.S. Fish and Wildlife Service, WI
Robert Harper, Forest Supervisor, U.S. Forest Service – Chippewa National Forest, MN
Karen Diver, Chairperson, Fond du Lac Reservation
Arthur LaRose, Chairman, Leech Lake Band of Ojibwe
Wayne Dupris, Environmental Manager, Fond du Lac Reservation
Bruce Johnson, Division Director, Division of Resources Management, Leech Lake Reservation
Levi Brown, Environmental Manager, Division of Resources Management, Leech Lake Reservation
Cheryl Laatsch, Office of Energy, Wisconsin Department of Natural Resources, Madison, WI

Steven Colvin, Supervisor, Environmental Review Section, Minnesota Department of
Natural Resources, MN

**U.S. EPA Comments on the U.S. Department of State (DOS)
Draft Environmental Impact Statement (DEIS) for
Enbridge Energy's Alberta Clipper Pipeline Project
[CEQ# 20080497]**

PROJECT DESCRIPTION

Enbridge Energy, Limited Partnership (Enbridge) proposes to construct, operate and maintain 992 miles of new pipeline and related facilities, extending from Hardisty, Alberta, Canada to Superior, Wisconsin. The Department of State (DOS) is considering issuing a Presidential Permit for the construction, operation and maintenance of facilities associated with the Alberta Clipper Pipeline at the U.S./Canada border. The U.S. portion of the proposal, the subject of the DEIS, includes the construction and/or installation, operation and maintenance of the following:

- 331.8 miles of new 36-inch-diameter underground petroleum pipeline from the U.S.-Canada border near Natchez, North Dakota, crossing Minnesota via the Clearbrook Terminal and continuing on to Enbridge's existing terminal in Superior, Wisconsin;
- new pumps and associated electrical equipment at three existing pump stations located in Minnesota [Viking Station Mile Post (MP) 848.2, Clearbrook Station (MP 909.5) and Deer River Station (MP D996.0)]; and,
- 32 mainline valves installed at major water body crossings and other select locations over the length of the pipeline route.
- ancillary facilities, such as access roads, and storage and contractor yards.

Enbridge also proposes to construct a 188-mile-long, 20-inch-diameter pipeline (Southern Lights Diluent Pipeline) between the Clearbrook and Superior Terminals at the same time and substantially next to the Alberta Clipper pipeline. The DEIS assesses the impacts associated with the Southern Lights Diluent proposal and reports the impacts as part of the Alberta Clipper Pipeline proposal. Construction is proposed to begin in Spring 2009, with work planned to be completed in early 2010.

In addition, Enbridge is proposing to expand its existing Superior, Wisconsin terminal (the Superior Terminal Expansion Project) by constructing 5 new tanks to accommodate the crude oil delivered by the Alberta Clipper Pipeline. Alternatives and Impacts associated with this connected action are identified and discussed in the DEIS.

MAJOR PIPELINE ROUTE ALTERNATIVES and ROUTE VARIATIONS

The DEIS does not identify a DOS preferred alternative [pipeline route]. The DEIS identifies a Proposed Alternative put forward by Enbridge for the Alberta Clipper Pipeline. The Proposed

Alternative route would abut Enbridge's existing pipeline right-of-way through North Dakota, Minnesota and Wisconsin and includes one 21.6 mile-long greenfield major route variation around the Fond du Lac (FDL) Reservation, and 21 shorter route variations, 20 in Minnesota and 1 in Wisconsin.

The DEIS does not describe, discuss nor consistently apply the specific criteria used, and the trade-offs made, in a comparative format to identify the Major Route Alternatives and Route Variations that comprise, in part, the DEIS Proposed Alternative route. Consequently, the DEIS is unclear whether all adequate steps have been taken to avoid and then minimize impacts to water resources, including wetlands. This type of information will be crucial as well for identifying the least environmentally damaging practicable alternative (LEDPA) for U.S. Army Corps of Engineers' (COE) Clean Water Act (CWA) Section 404 permits.

Recommendation: We recommend the FEIS describe, discuss and consistently apply the specific criteria used, and the trade-offs made, in a comparative format (i.e., charts and tables) in identifying the Major Route Variations and Route Variation Alternatives that comprise, in part, the FEIS preferred alternative.

Fond du Lac (FDL) [Major Route] Alternative: The FDL Major Route Alternative would abut Enbridge's existing right-of-way through the FDL Reservation. As identified above, the DEIS Proposed Alternative route is a 21.6 mile-long greenfield route around the southern portion of the FDL Reservation. It is our understanding that Enbridge and the FDL Band are still in discussions on possibly locating the pipeline through the FDL Reservation next to Enbridge's existing right-of-way. Consequently, the FDL Major Route Alternative may still be a viable alternative route to take into consideration when identifying the FEIS Preferred Alternative route.

Recommendation: We recommend the FEIS include the results of these discussions.

Recommendation: Whether or not both of these alternative routes are still under consideration in the FEIS, a comparison of the environmental impacts of these two alternative routes should to be given the same consideration in the text of the FEIS that the Straight Line Major Route Alternative and the Great Lakes Gas Major Route Alternative are given in the DEIS. This would include a "Comparison of Features" table, as was presented for the other two Major Route Alternatives in the DEIS.

Recommendation: Eventually, the final selection may be based on a variety of factors, such as environmental concerns and right-of-way acquisition or other things, but the FEIS should summarize and discuss a systematic environmental comparison. This information should be discussed in the main text, not merely in appendices, in order to be clear for readers. We recommend the FEIS expand on this idea by providing clear comparison tables and narrative. A useful approach to address such comparisons was included in Table 4.3-3 in the Preliminary DEIS.

Route Variations: The DEIS identifies 21 route variations that are part of the Proposed Alternative route. Again, the DEIS does not provide a systematic approach to justify these variations. Nor does the DEIS provide a table that compares the impacts associated with abutting the existing right-of-way versus the proposed variation. The DEIS usually identifies

only a few of the positive and usually none of the negative impacts associated with a particular route variation alternative. Often, the principal reason given for picking a particular route variation is to accommodate the desires of the landowner. This may prove to be a reasonable conclusion, but the DEIS did not consistently present and examine alternatives transparently both for NEPA and Section 404 purposes. Some situations may be pretty straight forward and others may be more complex.

Recommendation: For each minor route variation, we recommend that the FEIS provide a comparison (i.e., table) of the impacts associated with the proposed route variation and with an alternative that abuts existing pipeline right-of-way.

Recommendation: The FEIS should explain why the preferred route, including each variation, was chosen. The FEIS should be able to consistently answer such questions as: How are the basic alternative and the proposed variation the same or different for various factors? What are the trade-offs in selecting one over the other?

Nemadji Golf Course [Route] Variation: This variation is proposed as a route around the golf course in Superior, Wisconsin, instead of following the existing Enbridge pipeline right-of-way through the golf course. This variation would have significant environmental impacts. The DEIS justifies this variation as avoiding community recreational resources. Unfortunately, the area for this variation contains numerous high quality wetlands. Data on file from the wetland evaluation studies for the second Superior Special Area Management Plan (SAMP 2) indicates that the wetland areas immediately north of the golf course are of high quality for plant community integrity and wildlife habitat, values that are difficult to replace. Overall, the wetland assessment showed high to medium values. SAMP² data show that the wetland areas west of the golf course are generally ranked high for plant integrity and medium for other wetland values. Aerial photographs of this route variation, as shown in Appendix L of the DEIS, indicate that the principal aquatic features on the golf course are ponds. Additional wetlands may be present, but it is unlikely that they have retained the quality of the ones outside of the golf course. A systematic discussion of the differences between the two alternatives is not presented. Consequently, this alternative skirting the golf course would face serious difficulty in complying with the Clean Water Act (CWA) Section 404(b)(1) environmental regulations necessary to receive a CWA Section 404 permit.

Recommendation: We recommend the FEIS include a table and discussion that compares the impacts and trade-offs associated with the Nemadji Golf Course Variation and the use of Enbridge's existing right-of-way. The FEIS should also provide a full discussion of the resources in the area of this variation.

Additional Route Variations - Wisconsin: The DEIS does not provide adequate information on baseline environmental conditions and impacts to sensitive resources in Wisconsin. We understand that the Wisconsin Department of Natural Resources (WDNR) has requested that Enbridge assess additional pipeline routes for the Wisconsin portion of the proposal (page, 4-69) in order to reduce impacts to sensitive natural resources.

Recommendation: We recommend that the full set of Wisconsin route alternatives be compared in the FEIS. This would include the two in the DEIS: the original right-of-way and the current proposal to skirt the Nemadji Golf Course, plus the set of new alternatives requested by WDNR.

If a large group of new alternatives is developed, it may also be more workable to compare in detail those options deemed most promising by WDNR. The FEIS should document WDNR's agreement.

Recommendation: Each Wisconsin alternative should be discussed in the FEIS in detail comparable to what is presented for the DEIS Proposed Alternative route, including summary tables. For example, an alternative may cross X number of wild-rice-producing watersheds, but the distance between the crossing and the wild rice areas would be analyzed, as it was for the DEIS Proposed Alternative. Quantitative values for each alternative, old and new, need to be included.

ENVIRONMENTAL CONSEQUENCES

Hazardous Waste

The DEIS (page 4-23) identifies that soil and sediment sampling will be performed adjacent to the St. Regis Paper Company site to confirm that the pipeline is located sufficiently north of site-related contaminants. The samples should be analyzed to meet federal, state, and tribal screening levels for dioxin/furan toxic equivalents (TEQs) and polycyclic aromatic hydrocarbons (PAHs). The sampling results should be sent either electronically or in hard copy to the following address:

Timothy Drexler, Remedial Project Manager
Superfund Division
U.S. Environmental Protection Agency
77 W. Jackson Blvd., SR-6-J
Chicago, Illinois 60604-3590

For additional information regarding this site, you may contact Mr. Drexler may be reached at (312) 353-4367, by fax (312) 886-4071 or by email drexler.timothy@epa.gov.

Recommendation: We request the sampling requirements and EPA contact information be incorporated into the FEIS.

Waters and Wetlands

1) Stream crossings are an important aspect of the impacts of the project. A variety of crossing techniques were considered. At this time, we defer to the local expertise of the Minnesota and Wisconsin Departments of Natural Resources, and applicable tribal authorities for approval of the method to be used for each crossing, its design details, and any special mitigation requirements.

2) The DEIS is not consistent in summarizing the acreage and type of wetland impacts (see ES 7.4 and ES 7.5). The former states that about 1,397.49 acres of wetlands will be impacted during construction, with 692.85 of these acres maintained in an herbaceous state. The next section states that about 1,434.3 acres will be impacted during construction, with 713.1 of these acres maintained in an herbaceous state. Table 4.4.5-1 indicates that 682.85 acres will be

maintained in an herbaceous state, rather than 692.85 acres.

Recommendation: Please provide consistent quantification of wetland impacts throughout the FEIS. Please explain when any discussion departs from this baseline.

3) Information on access road impacts are not included in the total figures for impacts given in the DEIS. The footnote on page ES-8 indicates that wetlands impacts associated with access roads or pipe/contractor storage yards are *not* included in the total figures for wetlands impacts for the proposed project. Other portions of the document indicate at least some impacts from access roads and storage yards are included, such as on p. 4-59 or in Table 4.9.2-1. Access roads and pipe/contractor storage yards are an intrinsic part of the project, whether existing ones can be used or additional ones are needed.

Recommendation: We recommend that all permanent and temporary impacts associated with access roads and pipe/contractor yards should be added to the amounts projected for the pipeline route. Obtaining the full information listed on p. 4-214 and employing it consistently throughout the document will be essential for a sound FEIS and for Section 404 permitting.

4) The DEIS does not identify the specific wetland impacts that would occur on the Leech Lake Reservation nor on the Fond du Lac Reservation. For example, this information is not included in *Table 4.4.3.1 – Wetlands Estimated Impact summary for the Alberta Clipper Project* (pages 4-60 and 4-61).

Recommendation: As we indicated in our early remarks on the PDEIS, we recommend the FEIS separate and distinguish the wetland impacts associated with the various major route alternatives and/or route variations within the Leech Lake Reservation and within the Fond du Lac Reservation, and those in the rest of Minnesota. Any additional impacts from applicable access roads should be included.

5) As indicated in our remarks on the PDEIS, it is important to explain the typical time duration of various aspects of project construction. For example, identify the length of a construction path and the duration that a trench will be exposed or open. Discuss how this might vary by factors, such as terrain, vegetative cover or season of construction. This is an important aspect of understanding the environmental effects of construction of the project and for identifying measures to reduce erosion and sedimentation. The DEIS has some of this information scattered throughout Appendix D – Environmental Mitigation Plan. However, consolidation of this information and discussion should take place in the text of the EIS.

Recommendation: We encourage that the narrative sections accompanying Figure 2.4.2-1 in the main text of the FEIS address the time factors for construction, including the backfilling, clean-up and revegetation. For example, the discussion should answer such questions as: 1) how long are the “temporary” fill periods for stockpiled soil? 2) What is the maximum length of pipeline that would be constructed at one time? 3) Are there seasonal ranges for these values?

6) The length and duration of construction exposure became major issues in the recent construction of the Enbridge Southern Access pipeline in Wisconsin.

Recommendation: The identification and discussion of the specific “lessons learned” from the construction of the Enbridge Southern Access Pipeline in Wisconsin and their application to the

current pipeline proposal would be an excellent addition to the Alberta Clipper Pipeline FEIS. This should include experiences by the applicant, its contractors, and the regulatory agencies, in order to make the Alberta Clipper construction mitigation as effective and compliant as possible.

7) Trench breakers are proposed to be added during construction to maintain wetland hydrology from inadvertent project drainage, as discussed on page 4-63 and in Appendix D Environmental Mitigation Plan (EMP). We concur with this. However, we would like to see more specific criteria for where they will be mandatory and where they will be added at the judgment of the environmental inspector.

Recommendation: The FEIS should document what criteria will be used to assess whether or not trench breakers will be used in a particular area and identify who is ultimately responsible for making this determination. For example, should the ultimate decision maker be the COE?

8) Fen avoidance is discussed with the route variations on pp. 3-16 and 3-22. Since fens are groundwater-fed wetlands, it is important to ensure that the proposed action does not disrupt the source of wetland hydrology for the fens.

Recommendation: We recommend the FEIS document Enbridge's coordination with MDNR and the Corps' ecologists regarding the proposed project and fen hydrology.

Air Quality

1) EPA commends DOS for the level of information and discussion regarding air quality issues and air permits, as well as the quantification and discussions in the cumulative impacts section of the DEIS regarding air quality, green house gases (GHG) and climate change.

2) The DEIS (pages 4-303 and 4-304) correctly identifies that the proposed expansion at Superior Terminal is a major modification subject to Prevention of Significant Deterioration (PSD) review, and that the proposed new tanks are subject to best available control technology (BACT) analysis as part of PSD review. However, the FEIS does not identify that an air quality analysis is also required as part of the PSD review.

Recommendation: We recommend the FEIS identify that an air quality analysis is also required as part of the PSD review.

Forests

1) We appreciate that the DEIS acknowledges the wildlife habitat function of upland and wetland forests. We also commend DOS for identifying important functions that upland and wetland forests play in protecting water quality in the immediate watersheds, as well as their role, along with peat lands, in sequestering carbon associated with global warming.

2) The DEIS (4.9.2.1, page 4-223 – Forested Land) identifies that the Albert Clipper Project would affect approximately 1,403.4 acres of forestland. Of this total, approximately 650.4 acres would be able to revert to preexisting cover types. The remaining 753 acres would be in the permanent right-of-way and would be converted to and maintained as shrub and herbaceous cover, resulting in a permanent loss of 753 acres of forest land.

3) Compensation for the short-term and long-term temporal loss of wetland forests will be determined during the COE's CWA Section 404 permitting process. However, compensation for the loss of upland forest is not a given. We encourage voluntary compensation mitigation for both the short-term and long-term temporal loss of upland forest due to clearing. Mitigation might include, but may not be limited to, assisting local, county, state and/or federal agencies with any on-going or planned forest reclamation projects in the watersheds where the loss occurs and/or planting native tree saplings in the upland buffers at the project's wetland compensation mitigation sites.

Recommendation: We recommend the FEIS identify potential mitigation compensation opportunities for the loss of upland forest and identify whether or not Enbridge proposes to undertake such voluntary mitigation.

CUMULATIVE IMPACTS

1) The cumulative impacts analysis (DEIS Section 4.14, pp. 4-345 through 4-465) discussion is an important part of the NEPA document. We appreciate that cumulative impacts analysis is not an easy undertaking and commend DOS's efforts here. The analysis was conducted on both a project-wide and watershed-specific level. We particularly appreciate the level of analysis devoted to air quality, greenhouse gases and climate change (DEIS Section 4.14.3.12).

2) Section 4.14.3.12 - Air Quality, Greenhouse Gases, and Climate Change (pp. 4-354 through 4-367) would benefit from a brief introductory discussion and explanation of greenhouse gases (GHG) and Climate Change, and the reason for its importance.

Recommendation: We recommend the FEIS include a more thorough discussion and explanation of GHG and Climate Change and its importance. You may find this information at EPA's climate change website www.epa.gov/climatechange. EPA's site references reports from the Intergovernmental Panel on Climate Change, and provides links to the U.S. Climate Change Science program. The executive summary of the "Scientific Assessment of the Effects of Global Climate Change on the United States," by the National Science and Technology Council (May 2008), also synthesizes the climate change science.

3) A large number of refineries are identified in the DEIS as currently capable of refining heavy crude oil from Canadian sources. Table 4.14.3-1 identifies 31 refinery facilities connected directly or indirectly to the Enbridge/Lakehead system. These numbers suggest a potential for commercial demand for additional pipelines for crude and refined oil transport even after the Alberta Clipper Project were to go into service.

Recommendation: We request the FEIS specifically identify whether or not there are any future plans for additional pipelines paralleling the general layout of the Alberta Clipper right-of-way, serving the connecting points and terminals of the Alberta Clipper Project, or expanding the capacity of other portions of the Enbridge/Lakehead network.

4) In recent years, there have been discussions about the potential for adding a large number (approximately 19) new “merchant storage tanks” at or near Enbridge’s Superior Terminal. However, the DEIS identifies that Enbridge is perhaps considering adding around 6 merchant tanks (page 4-457) at or next to the Superior Terminal. EPA understands that the Superior Terminal area includes facilities owned by companies other than Enbridge, such as Husky Oil. Recommendation: We request the FEIS specifically identify any additional known future expansion proposals from other companies in or near the Superior Terminal. If applicable, potential impacts associated with these facilities should be identified and considered as part of the cumulative impacts analysis.

Recommendation: We request the FEIS identify the current best estimates of tank demand in the Superior area.

5) Page 4-457 refers to an initial 2008 EIS on the Murphy Oil Refinery expansion. EPA is not aware of a federal or a state EIS currently being undertaken for a Murphy Oil Refinery expansion.

Recommendation: We recommend the FEIS identify the federal and/or state agency that is undertaking a federal and/or state EIS for a Murphy Oil Refinery expansion, and the status of that effort, or delete this reference if it is erroneous.

6) Sensitive Species (page 4-417): The DEIS states that the U.S. Fish and Wildlife Service (FWS) has not provided its determination on the draft Biological Assessment (BA).

Recommendation: EPA recommends that the FEIS include the FWS determination on the BA.

Recommendation: We recommend that any specific mitigation measures identified in the FWS determination be identified in the FEIS and incorporated into an Impacts / Mitigation Summary Table (see MITIGATION, item #2, first Recommendation below).

MITIGATION

1) As identified above, the FEIS should be better structured to compare alternatives and indicate the selection process used to determine the preferred alternative. The DEIS Chapter 5 – Conclusions and Additional Mitigation is very brief and does not provide a good summary of the results of the environmental analysis and the alternatives analysis to support the conclusions stated here. More detail in Chapter 5 will strengthen the FEIS, and will be especially important in explaining the additional alternatives in the FEIS for the Wisconsin portion of the project.

Recommendation: We recommend the FEIS provide a better explanation of the decision making process used to select the FEIS Preferred Alternative than is currently provided in the DEIS.

2) Chapter 5 refers the reader to the various DEIS appendices to search for specific mitigation measures. This approach is not clear and does not provide for sufficient accounting and overall understanding of the mitigation measures that will be undertaken by Enbridge to avoid, minimize and compensate for impacts associated with each resource of concern impacted by their proposal.

Recommendation: To help consolidate and summarize the proposals impacts and the various mitigation measures scattered throughout the document, we recommend the FEIS include one overarching Impacts / Mitigation Summary Table that identifies and quantifies (where feasible) all impacts associated with the proposal and details the mitigation that has and will be undertaken to avoid, minimize and compensate for those impacts as identified throughout the document. We recommend the Impacts / Mitigation Summary Table be included in the Executive Summary, as well as in the Conclusions and Mitigation Chapters of the document.

Recommendation: When the EIS refers the reader to a different area of the document for additional information, we recommend the referral provide the specific sub-subsection and page number of the Chapter or Appendix that this information is to be found. This will make review of the document much more efficient.

Recommendation: We also recommend the word “Additional” be removed from the title of Chapter 5.

Waters and Wetlands Compensatory Mitigation

1) Enbridge has had difficulty and spent much time to locate good mitigation sites for offsetting losses to forest and shrub wetlands in northern Wisconsin for their already constructed Southern Access Pipeline in Wisconsin. Consequently, we have concerns regarding the length of time it might take to find, plan and implement effective compensatory mitigation for any wetlands losses from the Alberta Clipper Pipeline Project and Superior Terminal Project. The April 10, 2008, EPA-Corps of Engineers Rule on Wetlands Mitigation stresses the importance of early planning for compensatory mitigation and considering the watershed context for offsetting wetlands impacts.

Recommendation: We recommend the FEIS identify the watershed locational goals of wetland mitigation for this project. In addition, the FEIS should identify what mitigation Enbridge intends provide, where they propose to provide it, and through what mechanisms. If the Minnesota mitigation banking system is proposed for use, the FEIS should explain how this would work and identify if shrubs and forested wetland credits are available. In Wisconsin, commercial mitigation bank sites with available credits do not exist at this time. The FEIS should explain how wetland mitigation is proposed to be provided and in which watersheds.

Recommendation: We recommend the FEIS acknowledge the February 2002, Guidelines for Wetland Compensatory Mitigation in Wisconsin.

2) The DEIS (page 4-65) presents compensatory mitigation for wetlands as the likely ratio required by the St. Paul District and others to offset the temporary construction losses to wetlands resources. Comparable ratios have been used in similar projects in the St. Paul District, so these and their resulting acres are reasonable to use in the NEPA documents.

Construction Mitigation

1) The DEIS lists a number of good management practices for pipeline construction in Appendix D. In addition to the Enbridge environmental inspector, it proposes adding the independent environmental monitor position.

Recommendation: The choice of an independent environmental monitor should also be approved by the affected Indian tribes, when working in Indian Country. The FEIS should identify how and when this will occur.

Recommendation: Reports shared with agencies should also go to tribal environmental departments, where applicable. The FEIS should describe how this would occur.

2) Considerable reporting is proposed to coordinate with some of the regulatory agencies, which is a good idea, but needs to be designed to work effectively. Specifically, on page 5-3, a Construction and Mitigation Plan report would be sent to the Corps of Engineers one week prior to construction. This is an extremely limited notification period, unless Corps staff persons are dedicated to priority review of this material. Further, having it occur during the point of the construction mobilization week puts undue pressure on all to move forward with what is proposed. This report is a useful concept, but needs to be planned with the regulatory agencies to make it an effective tool.

A similar issue arises with the proposed daily reports to the Corps of Engineers and State agencies (and, in some cases Tribal environmental departments) from the independent environmental monitor. For the reports to be effective, there must be the capacity for agency staff to receive and review that material immediately, when they are likely to be balancing multiple priorities.

Recommendation: The FEIS should explain effective, realistic reporting together with input from the key Federal, State and Tribal agencies, and indicate that they concur with the proposed approach.

3) Crossing sensitive natural areas, such as the Minnesota Protected Waters Inventory or Areas of Special Natural Resource Interest, or Wisconsin's State Natural Areas and Areas of Special Natural Resource Interest should not be considered a routine event. Every effort must be made to avoid these areas.

Recommendation: A site-specific approach to the sequence of efforts taken to avoid, reduce or offset adverse effects must be worked out. Steady, detailed attention in the FEIS, including consideration of additional alternatives, will help on this issue.

Construction Emissions Mitigation

1) DEIS Appendix D – Environmental Mitigation Plan identifies measures that would be implemented to minimize or avoid impacts to resources, such as wetlands, associated with project construction. The DEIS does not identify measures that would be undertaken to reduce construction emissions of criteria air pollutants and hazardous air pollutants (toxics).

Recommendation: EPA recommends that the FEIS include a *Construction Emissions Mitigation Plan* to reduce construction emissions and commit to the use of these measures during construction, as appropriate.

- Reduce emissions of diesel particulate matter (DPM) and other air pollutants by using particle traps and other technological or operational methods. Control technologies, such as traps, control approximately 80 percent of DPM. Specialized catalytic converters (oxidation

catalysts) control approximately 20 percent of DPM, 40 percent of carbon monoxide emissions, and 50 percent of hydrocarbon emissions.

- Ensure that diesel-powered construction equipment is properly tuned and maintained, and shut off when not in direct use.
- Prohibit engine tampering to increase horsepower.
- Locate diesel engines, motors, and equipment as far as possible from residential areas and sensitive receptors (e.g., schools, daycare centers, and hospitals).
- Require low sulfur diesel fuel (<15 parts per million), if available.
- Reduce construction-related trips of workers and equipment, including trucks.
- Lease or buy newer, cleaner equipment (1996 or newer model), using a minimum of 75 percent of the equipment's total horsepower.
- Use engine types such as electric, liquefied gas, hydrogen fuel cells, and/or alternative diesel formulations, if feasible.

APPENDIX C – Agricultural Mitigation Plan (AMP)

1) The DEIS identifies that the proposal will impact agricultural lands in Wisconsin, Minnesota and North Dakota. The Minnesota AMP identifies that the AMP was developed in consultation with the Minnesota Department of Agriculture and in conjunction with Enbridge Pipelines Southern Lights L.L.C.'s application for a routing permit submitted to the Minnesota Public Utilities Commission (PUC). However, Appendix C only contains the Agricultural Mitigation Plan for Minnesota. It does not contain AMPs for Wisconsin and North Dakota.

Recommendation: We recommend the FEIS identify and discuss what specific measures will be undertaken during construction and operation to protect the valuable agricultural resources in Wisconsin and North Dakota. We recommend that Enbridge, in conjunction with the appropriate resource agencies in those two states, develop state-specific AMPs and include them in FEIS.

APPENDIX D – Environmental Mitigation Plan (EMP)

1) Specific mitigation measures for non-agricultural resources for Minnesota are identified in Appendix A of the EMP. The EMP does not include specific North Dakota or Wisconsin mitigation measures.

Recommendation: We recommend Enbridge, in conjunction with the appropriate resource agencies in Wisconsin and North Dakota, develop specific mitigation measures for those two states. This information should be included in the FEIS.

Recommendation: We recommend Enbridge in conjunction with the appropriate resource agencies in North Dakota develop specific mitigation measures for North Dakota. This information should be included in the FEIS.

2) During recent construction of the Enbridge Southern Access Pipeline in Wisconsin, Enbridge encountered substantial difficulty in implementing the practices to limit adverse environmental impacts and in complying with permits and other regulatory requirements.

Recommendation: Please explain in the FEIS what steps the company and its contractors will take to ensure compliance with permits and regulatory requirements on the Alberta Clipper and Southern Lights Diluent projects.

APPENDIX I – Revegetation and Restoration Monitoring Plan

We commend DOS for including the species planting lists for North Dakota, Minnesota and Wisconsin included here in the DEIS. We will rely on the expertise of the respective Departments of Natural Resources to review the use of plants native to the ecoregions within each state for the planting lists.

APPENDIX P– Superior Terminal (P1 – Superior Wetland Delineation Report, P2 – Superior Terminal Alternatives Analysis)

1) We appreciate and commend DOS for including the wetland delineation and alternatives analysis for the Superior Terminal Expansion Project in this DEIS appendix. Environmental justice considerations of the Preferred Alternative were addressed in Appendix P2. Shortly, EPA will be submitting comments regarding aquatic resources impacts to the COE during their CWA Section 404 Public Notice Comment Period for the Superior Terminal Expansion Project. Beside aquatic resources impacts, we are also concerned about the safety and socio-economic effects to Superior residents presently living northeast of the proposed new tanks.

Recommendation: We request the FEIS provide additional analysis and discussion regarding the Superior Terminal Expansion Project that answers such questions as: 1) Will the addition of tanks at the proposed distance present any safety issues or the need for special precautions? 2) Will there need to be an increase in the level of fire or emergency services provided either on the Enbridge site or by the City to protect Superior residents and their homes? 3) Would the proposed tanks likely increase the property insurance rates or decrease the availability of property insurance in the nearby neighborhood?

Recommendation: We also request that the FEIS identify the closest distance between the nearest proposed new tank and a residence for each of the alternatives identified.

ERRATA and EDITORIAL RECOMMENDATIONS

1) (Page 1-8) The last three sentences of the first paragraph under 1.3.2.1 U.S. Environmental Protection Agency incorrectly states: “If a Section 402 permit is needed within the Leech Lake Reservation, EPA would be the permitting authority. In addition, EPA has authorization for issuing or denying CWA Section 401 water quality certification within Indian Reservations. The FDL have Section 402 permitting responsibility on FDL Reservation lands.”

Correction: These sentences should be corrected for the FEIS as follows: “If a Section 402 permit is needed within the Leech Lake Reservation **or FDL Reservation**, EPA would be the permitting authority. In addition, EPA has authorization for issuing or denying CWA Section 401 water quality certification with the **Leech Lake Reservation**. The FDL Band has **CWA Section 401 water quality certification** responsibility **within the FDL Reservation**.”

2) (Page 1-10) 1.3.2.8 Fond du Lac Band of Lake Superior Chippewa Reservation. The last paragraph it states: “If that route were to be selected, the band would have permitting authority for environmental, archaeological, and cultural resources for that portion of the route, as well as jurisdictional authority for a CWA Section 401 certification.”

Correction: These sentences should read: “If that route were to be selected, the Band would have permitting authority for environmental, archaeological, and cultural resources for that portion of the route, as well as jurisdictional authority for a CWA Section 401 **water quality certification if Section 402 and /or 404 permits are needed.**”

3) (pages 1-14 to 1-19) Table 1.6-1 Key Permits, Licenses, Approvals, and Consultation Requirements for the Alberta Clipper Project identifies all permitting and/or consultation authorities’ actions, except for the EPA (page 1-15) under Section 402 permits, as they will **“consider issuance of permit.”** Whereas, for EPA, it states that EPA will **“review and issue permit.”** It seems the DEIS is requiring permit issuance by EPA and that the other agencies are just being required to consider permits.

Correction: For consistency, we recommend Table 1.6-1 be corrected to read **“review and consider”** under the Agency Action column associated with the Section 402 permit under the U.S. Environmental Protection Agency.

Correction: We also recommend that **“Certificate”** be changed to **“Certification”** in the Agency Action column in Table 1.6-1 (page 1-16) under U.S. EPA, Section 401.

Correction: For Wisconsin Department of Natural Resources (page 1-18), the superscript “b” (page 1-19) should be a superscript “a” under Agency Action for 401 certification. Please correct in the FEIS.

Correction: We also note that superscript “c” (page 1-19) identifies that the Minnesota Pollution Control Agency (page 1-18) has issued a Section 401 water quality “certificate.” Is this correct? If not, we recommend superscript “c” be eliminated. If yes, we request that Table 1.6-1 include the date water quality certification was issued by the Minnesota Pollution Control Agency.

Recommendation: We also recommend that the FEIS identify whether any other permits, approvals, or certifications have been acted upon by other agencies and include the dates in Table 1.6-1. You might consider adding another column to this table titled: “Date of Action.”

4) (Page 4-53), **4.4.1 Environmental Setting**, (page 4-53, 3rd paragraph, 2nd sentence).

Correction: Change **“routing”** to **“routine.”**

5) Recommendation: Please check to see that the acronyms used in the appendices also show up on the master list of acronyms, such as “EWS” on p. 23 of Appendix D.